

General Information Letter: Sick pay included in federal adjusted gross income is also included in base income.

December 24, 2003

Dear:

Your letter dated November 19, 2003, to the Department's Brenda Evans has been referred to the undersigned for a reply. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

As a payroll service provider, COMPANY1 and COMPANY2, is interested providing our clients with the most current taxability information.

Recently, the issue of taxability for 'Regular Hourly Sick Pay' has been questioned in a couple of states. Our intent of this letter is to obtain whether your agency regards these wages as taxable or exempt.

To clarify the term 'taxable wages' we are asking if 'sick pay' is exempt from being reported/considered as wages for your state agency (not 'taxable income' as a federal/state application interpretation).

Below are some situational questions, which could help clarify what we want to know for your state agency:

. Is there any difference between '**sick leave**' & '**sick pay under a separate plan**'?

For example:

Sick leave: 'I am home sick for a brief absence and paid by my employer out of the regular payroll account and using my allotted sick days.'

Would this be considered taxable wages?

Sick pay under a separate plan: Meaning an employee is absent from work due to illness or injury for more than a few days, but is expected to return at some point, thereby receiving wage replacement income through their employer's sick pay plan. 'I am at home with an illness for 14 days and a third party is paying my wages from a separate sick pay plan, funded by my employer.'

Would this be considered taxable wages?

Are there any situations where sick pay is taxable?

If so, what are they?

Can you provide rules and examples?

Do you have a specific statute covering these issues, or any other statutes that would pertain to this subject?

If so, could you provide a copy or link?

At this time, COMPANY1 will continue to treat all 'regular-hourly sick pay' as taxable income until we have a clear interpretation from your state agency. We have included a Business Reply Envelope for your convenience.

Response: You inquire about the Illinois income tax treatment of sick and disability pay. Section 203(a)(1) of the Illinois Income Tax Act (IITA) requires that the starting point of a taxpayer's base income is an amount equal to the taxpayer's adjusted gross income. Consequently, to the extent that amounts received by an employee through accident, sickness or disability are included in the employee's adjusted gross income, such payments are subject to Illinois income tax unless otherwise deductible.

IITA Section 203(a)(2)(E) provides a deduction from Illinois base income for all amounts included in a taxpayer's adjusted gross income as distributions under the provisions of any retirement or disability plan which is federally "tax-qualified" under the provisions of Internal Revenue Code Sections 402(a), 402(c), 403(b), 406(a), 407(a) and 408 or distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit. Consequently, any sick or disability payment paid pursuant to any of such plans that are included in taxpayer's adjusted gross income may be subtracted from taxpayer's base income. There are no other deductions applicable to the type of income you address.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax